

investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2006-51 on the subject line.

##### *Paper comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2006-51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2006-51 and should be submitted on or before December 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris,

Secretary.

[FR Doc. E6-19622 Filed 11-20-06; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54752; File No. SR-NASDAQ-2006-040]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, To Modify Certain Fees for Listing on the Nasdaq Stock Market and To Make Available Products and Services Intended To Assist Companies With Their Disclosure and Regulatory Obligations, Shareholder Communications, and Other Corporate Objectives

November 14, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 2, 2006, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On October 30, 2006, Nasdaq filed Amendment No. 1. Nasdaq filed Amendment No. 2 on October 31, 2006. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to: (i) Modify annual fees for Nasdaq Global Market and Nasdaq Capital Market issuers; (ii) modify entry fees for Nasdaq Capital Market issuers; (iii) modify the listing of additional shares ("LAS") fee for domestic issuers and establish an LAS fee for foreign issuers; (iv) modify fees for issuers seeking written interpretations of Nasdaq's listing rules; and (v) adopt other fee changes related to companies listing on and transferring between Nasdaq markets. The text of the proposed rule change is available at Nasdaq, at the Commission's Public

Reference Room, and at [www.nasdaq.com](http://www.nasdaq.com).

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Nasdaq proposes several modifications to its listing and other issuer fees as set forth below.

###### (i) Capital Market Entry Fee Changes

Nasdaq proposes to modify the entry fees payable by issuers listing on the Nasdaq Capital Market.<sup>3</sup> This fee is assessed on the date of entry and is calculated based on total shares outstanding. Currently, the minimum entry fee payable by a Nasdaq Capital Market issuer is \$25,000 for listing up to five million shares of securities and the maximum fee is \$50,000 for listing over 15 million shares. Pursuant to the proposed rule change, the minimum entry fee would increase to \$50,000 for an issuer listing up to 15 million shares and the maximum fee would increase to \$75,000 for an issuer listing over 15 million shares. In determining these fees, Nasdaq considered the fees charged by other markets and notes that the proposed Capital Market entry fees remain substantially below those of the New York Stock Exchange ("NYSE") and NYSE Arca, and, are comparable to the fees charged by the American Stock Exchange ("Amex").<sup>4</sup> Nasdaq also considered the time and effort that its staff devotes to the review and consideration of the typical Capital Market application. Finally, Nasdaq considered recent enhancements to its trading markets that facilitate initial public offerings, such as the Nasdaq IPO

<sup>3</sup> Nasdaq entry fees for Capital Market issuers were last increased in 2003. See Securities Exchange Act Release No. 47111 (December 31, 2002), 68 FR 822 (January 7, 2003) (SR-NASD-2002-183).

<sup>4</sup> The proposed Capital Market entry fees range from \$15,000 below to \$5,000 higher than the comparable Amex fee.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Cross. The IPO Cross is designed to ensure a more orderly market for new issues, as well as to provide fair executions for investors through an open and transparent process in which investors have the ability to enter orders and participate in price discovery, creating a single price for IPOs based on supply and demand. Nasdaq believes that this enhanced opening process increases the value of a Nasdaq listing.

(ii) Listing of Additional Shares Fee Changes

In addition, Nasdaq proposes to modify the fees for listing additional shares by domestic companies listed on the Nasdaq Global Market or the Nasdaq Capital Market.<sup>5</sup> Under the existing rule, Nasdaq issuers are assessed a quarterly fee of \$2,500 or \$0.01 per additional share, whichever is higher, up to an annual maximum of \$45,000 per issuer. Under the proposed rule, the minimum quarterly fee would increase to \$5,000 and the maximum fee would increase to \$65,000 per year. The rule would continue to provide that no fee is charged for issuances of up to 49,999 additional shares per quarter.

In addition, Nasdaq proposes to introduce an LAS fee in the amount of \$5,000 for non-U.S. companies that list additional shares or additional shares underlying ADRs in a given fiscal year. Historically, these companies were not charged an LAS fee. Nasdaq will calculate and assess this fee annually based on the change in the issuer's total shares outstanding as reported on its annual reports filed with the SEC. As with domestic issuers, however, there will be no fee for issuances of up to 49,999 additional shares per year.

The LAS fee is designed, in part, to offset the costs associated with reviewing the transactions that give rise to the issuance of shares for compliance with Nasdaq's requirements. In that regard, Nasdaq staff has devoted increased time to counseling companies regarding the application of those rules and has developed a comprehensive Web site providing guidance to companies, including frequently asked questions, summaries of Nasdaq interpretive positions, and rulings by the Nasdaq Listing and Hearing Review Council. The revised LAS fees will allow Nasdaq to continue these efforts. In addition, the proposed LAS fee on non-U.S. companies will allocate costs attributable to those companies in a more equitable manner. Nasdaq believes

it is appropriate to maintain a lower LAS fee for non-U.S. companies because the Nasdaq listing is often not the primary listing for such companies.

(iii) Annual Fee Changes

Nasdaq proposes to modify the annual fees payable by domestic and foreign issuers listed on the Nasdaq Global Market (including the Nasdaq Global Select Market) or the Nasdaq Capital Market.<sup>6</sup> Currently issuers on each market are required to pay an annual fee based on the total number of shares outstanding. Under the proposed rule change, annual fees on the Nasdaq Global Market would increase from a minimum of \$24,500 and a maximum of \$75,000 to a minimum of \$30,000 and a maximum of \$95,000. In addition, annual fees on the Nasdaq Capital Market would increase from a minimum of \$17,500 and a maximum of \$21,000 to a \$27,500 flat fee for any amount of shares outstanding. Annual fees for American Depositary Receipts ("ADRs") listed on the Capital Market and ADRs and Closed End Funds on the Global Market would remain unchanged.

Nasdaq competes with several other domestic and international stock markets for company listings. Nasdaq considered the fees charged by these other markets in determining the new fees.<sup>7</sup> Nasdaq also considered the substantial resources it dedicates to its regulatory programs, ensuring that they are world-class. The Nasdaq Listing Qualifications Department monitors companies for compliance with the continued listing standards. In that regard, Listing Qualifications staff reviews all SEC filings made by Nasdaq-listed companies, including proxies and Forms 10-Q, 10-K and 8-K. This review is to assure that the issuer remains compliant with Nasdaq's financial and qualitative requirements, including all of Nasdaq's corporate governance listing standards. These reviews are facilitated by the use of a sophisticated, web-based compliance monitoring tool, which Nasdaq continuously enhances. In addition, Nasdaq has taken steps to

<sup>6</sup> Nasdaq annual fees were last increased in 2005. See Securities Exchange Act Release No. 50838 (December 10, 2004), 69 FR 75578 (December 17, 2004) (SR-NASD-2004-128).

<sup>7</sup> The proposed \$27,500 Capital Market annual fee compares to fees of \$30,000—\$85,000 on NYSE Arca and from \$16,500—\$34,000 on Amex. Each of these markets has listing standards comparable to those applicable to Capital Market companies. The proposed annual fees for the Nasdaq Global and Global Select Markets range from \$30,000 to \$95,000, compared to fees on the NYSE that range from \$38,000 to \$500,000. For any amount of shares outstanding, Nasdaq's fees would be less than those of the NYSE, and would be more than \$400,000 less for some Global and Global Select Market companies.

enhance the transparency available to investors and potential investors surrounding its review of deficient companies and has enhanced its Web site to provide guidance to Nasdaq-listed companies. The Nasdaq MarketWatch Department maintains an orderly marketplace and a level playing field for market participants, investors and the general public. MarketWatch staff provides real-time surveillance of price and volume information reported by market participants, and reviews abnormal activity to determine if action is required to maintain a fair market. This surveillance is supported by real-time, automated detection systems, newsgathering resources, and contacts at listed companies and trading firms. Nasdaq companies and their investors also benefit by Nasdaq having an independent regulator in NASD, which enhances confidence in the trading of their securities.

In setting fees, Nasdaq also considered enhancements made to its trading systems since it last raised fees. For example, Nasdaq has implemented an "Opening Cross" and a "Closing Cross," which determine a single price for the opening and closing, respectively, thereby helping issuers and investors by increasing liquidity and improving price discovery at these critical times of the day. Nasdaq also plans to launch Intraday Crosses and a Post-Close Cross and is in the final stages of launching its "Single Book" platform, which will further enhance liquidity for Nasdaq-listed companies. By contributing to increased liquidity, these systems help lower the cost of capital for Nasdaq-listed companies and their investors. While most of the costs of these systems are borne by their users, it is appropriate to consider the costs of developing and running these systems in establishing listing fees because listed companies and their investors benefit from the existence of these systems and because the systems enhance the value of a Nasdaq listing.

In addition, Nasdaq has announced that it will make available products and services intended to assist companies with their disclosure and regulatory obligations, shareholder communications, and other corporate objectives. Specifically, Nasdaq intends to provide enhancements to NASDAQ Online and the Market Intelligence Desk that will provide companies with additional information and analysis to help manage their investor relationship programs and understand movements in the market for their securities. In addition, Nasdaq intends to offer companies a service that converts their annual report and proxy material into a

<sup>5</sup> LAS fees were last increased in 2003. See Securities Exchange Act Release No. 48631 (October 15, 2003), 68 FR 60426 (October 22, 2003) (SR-NASD-2003-127).

dynamic, online document for use by current and potential shareholders. Nasdaq also intends to offer companies a customized report to help analyze their exposure to securities litigation and, for those companies that choose to participate, peer data on the size, structure and cost of director and officer insurance programs. Finally, Nasdaq plans to offer the following services: four audio webcasts, four press releases, and four Form 8-K filings.<sup>8</sup> Of course these services cannot satisfy all of a typical company's disclosure and compliance requirements, but using these services a company could, for example, announce their earnings each quarter to investors in a press release, file that press release on a Form 8-K, and have an audio webcast to discuss the quarter's results. Thus, Nasdaq believes that these services can assist companies in their disclosure requirements and will allow investors better access to company information. Nasdaq believes that all of these enhancements and services will assist companies in fulfilling their responsibilities as public companies, facilitate their investor relations and visibility goals, allow investors better access to company information and, while incidental to the listing, will differentiate a Nasdaq listing. Moreover, Nasdaq notes that these services are consistent with services that exchanges have long made available to their listed companies, which may or may not be used by those companies.<sup>9</sup> While not every company will use every service, Nasdaq believes there will be something of value to all companies. Further, given that Nasdaq's listing fees are generally below those of other markets, every

<sup>8</sup> Audio webcasts are encoded audio streams that are distributed via internet compliant file formats. Press releases, limited to 500 words, would be distributed over the PrimeZone U.S. circuit, which includes distribution to all major financial and news organizations. Companies will be able to file Forms 8-K with the Commission via the Commission's EDGAR system. The services described are what Nasdaq intends to offer during 2007. Nasdaq also plans to offer these or similar services on an ongoing basis, but will evaluate companies' usage of the services and explore other opportunities for services for listed companies, and may adjust the mix of products and services accordingly.

<sup>9</sup> For example, an exchange may hold an investor conference at which a company can elect to present information, or can choose not to do so. Another exchange may make a market opening ceremony available, of which some issuers may take advantage and others do not. Exchanges make reports available to their listed companies; some companies use those reports, whereas other companies instead obtain similar reports from third parties. Similarly, Nasdaq understands that other markets have made available investor disclosure services, such as webcasts, for their listed companies in recent years, which some companies have elected not to use.

company will receive significant value for its listing fee in comparison to a listing on other markets.

#### (iv) Fees for Written Interpretations

Under Nasdaq Rule 4550, an issuer considering a specific action or transaction can request an interpretation from Nasdaq as to how Nasdaq's rules apply to the proposed action or transaction. This service is provided for a non-refundable fee of \$2,000, and the process generally takes four weeks. Alternatively, an issuer may elect to pay a non-refundable fee of \$10,000 to receive an expedited response, which will be provided by a specific date that is less than four weeks but at least one week after the date staff receives all information necessary to respond to the request.

Under the proposed rule, the non-refundable fee for a written interpretation under the regular service would increase from \$2,000 to \$5,000 and the fee for expedited service would increase from \$10,000 to \$15,000. The process for reviewing written interpretations was established in 2003 and fees have not been increased since that date.<sup>10</sup> Since that time, many of the interpretative issues raised by this process have become more complex and taken an increasing amount of staff time, due in part to an increased focus on corporate governance, executive compensation issues and new SEC requirements regarding board composition and other matters. Given these changes, Nasdaq believes the fee increase is appropriate to support the ongoing cost of providing this service to issuers and to allocate that cost to those companies using this service.

In addition, Nasdaq proposes to modify Rule 4550 to clarify that an issuer that has been suspended or delisted, but where review of that decision is pending, is eligible to request a written interpretation upon payment of the applicable fee.

#### (v) Other Fee Changes and Waivers

Nasdaq also proposes to adopt two new fee waivers and eliminate the entry fee for most companies transferring between the Nasdaq Capital Market and the Nasdaq Global Market. First, Nasdaq is proposing to adopt new Interpretive Material to clarify that, in the case where a Nasdaq-listed company is acquired by a non-Nasdaq company and the surviving entity of the merger lists on the Nasdaq Global Market or the Nasdaq Capital Market, the company

would receive a pro-rated waiver of the annual fee for the period of time following the merger. Because the newly listing company would also be assessed an annual fee for that period, Nasdaq believes that it is equitable to provide this waiver.

Second, Nasdaq proposes to waive the entry fee if a non-listed company acquires a company listed on another market, and, in connection with the acquisition, the surviving entity lists on Nasdaq. Nasdaq believes that this situation is comparable to a company switching from another exchange, for which Nasdaq waives the entry fee. Although these companies would be reviewed for compliance with Nasdaq listing standards in the same manner as any other company applying for listing on Nasdaq, Nasdaq believes that, on average, the review of such an issuer is less likely to involve time-consuming regulatory issues than the typical application from a company conducting an initial public offering or transferring from the over-the-counter market.

Third, the proposed rule change would eliminate the entry fee for most companies transferring between the Nasdaq Capital Market and the Nasdaq Global Market. The Global Market entry fee would not be applicable to a transfer from the Capital Market to the Global Market, except if a company that qualified for the Global Market chose to initially list after January 1, 2007, on the Capital Market instead. In this limited case, when the company seeks to transfer, Nasdaq will charge the company the difference between the Global Market Fee in effect at the time of the transfer and the Capital Market fee previously paid. Nasdaq believes the waiver of the entry fee is appropriate because these companies are already subject to Nasdaq's regulation and Nasdaq's qualitative listing requirements. As such, while Nasdaq conducts a complete review of all applicants, Nasdaq's experience is that the review of a company that is already listed on Nasdaq will generally take less time and effort than the application of an unlisted issuer. Nasdaq also notes that the waiver will allow Nasdaq to better compete with other markets for listings. In that regard, NYSE Group recently adopted a fee waiver for companies transferring between NYSE Arca and NYSE.<sup>11</sup> The proposed waiver is, in part, a response to that fee structure, intended to incent companies to initially list and remain listed on Nasdaq, rather than seek a listing

<sup>10</sup> See Securities Exchange Act Release No. 48450 (September 4, 2003), 68 FR 53770 (September 12, 2004) (SR-NASD-2004-105).

<sup>11</sup> See Securities Exchange Act Release No. 54223 (July 26, 2006), 71 FR 43833 (August 2, 2006) (SR-NYSE-2006-43).

elsewhere, thereby promoting competition between Nasdaq and other exchange markets.

#### (vi) Implementation

The new annual fee schedule would be effective January 1, 2007. The new LAS fee schedule for domestic issuers would be effective for issuers starting with fiscal years beginning on or after January 1, 2007. Nasdaq will establish the initial number of shares for the LAS fee for non-U.S. issuers based on an issuer's first annual filing after January 1, 2007. Companies will be assessed the fee for the increase in the number of shares based on the subsequent annual filing. The entry fee changes would be effective upon approval of the proposed rule change by the Commission. However, issuers that have submitted a listing application to the Nasdaq Capital Market and paid the applicable application fee prior to the approval of the proposed rule change would be charged an entry fee based on the existing fee schedule and would not be subject to the change in entry fees.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>12</sup> in general, and with Section 6(b)(4) of the Act,<sup>13</sup> in particular. Section 6(b)(4) requires that Nasdaq's rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. As described above, the proposed rule change will benefit issuers and investors by providing an equitable allocation of reasonable fees and charges among issuers listed on Nasdaq and allow Nasdaq to continue to enhance the services provided to issuers.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In that regard, Nasdaq notes that the proposed fees are generally lower than the fees charged by other U.S. marketplaces for listing and are appropriate in light of the trading system enhancements Nasdaq has made and the regulatory oversight that Nasdaq provides.

The proposed fees are also justified because of the numerous additional services that Nasdaq provides and plans to provide to listed companies. Nasdaq

believes that by offering additional services to listed companies Nasdaq will differentiate itself, thereby enhancing competition among marketplaces, both domestically and globally, by increasing the value of a Nasdaq listing.<sup>14</sup>

Nasdaq also believes that offering services to listed companies will enhance competition among the providers of those services. The press release and Edgar-filing services that are being provided do not nearly satisfy listed-companies' needs for these services. As such, companies will still need to purchase these services from service providers and these service providers will continue to compete for this business based on price, reliability, and quality of services. To the extent that Nasdaq becomes a meaningful competitor to the existing providers of such services, listed companies will benefit from enhanced competition for their business.

With respect to press-release distribution, in particular, Nasdaq notes that its participation can only increase competition. Nasdaq estimates that two service providers, PR Newswire and Business Wire, distribute approximately 85% to 90% of press releases for public companies listed on U.S. exchanges.<sup>15</sup> By contrast, PrimeZone Media Network, the Nasdaq-owned company which will provide the services described, distributes fewer than 5% of press releases for public companies listed on U.S. exchanges. In fact, if all Nasdaq companies make use of all four press releases proposed to be offered to them, Nasdaq estimates that PR Newswire and Business Wire combined will still distribute more than 80% of press releases for public companies listed on U.S. exchanges. Given this landscape, it is apparent that the services Nasdaq is offering companies could only enhance competition, thereby reducing costs for our listed companies, and would not be a burden on competition. These same providers, as well as Thomson Financial, and financial printers, such as Bowne, Donneley, and Merrill Corp., among others, also provide services comparable to the Form 8-K EDGAR filings and webcasts that Nasdaq

intends to provide. With respect to EDGAR filings, Nasdaq notes that in the twelve months prior to October 26, 2006, there were approximately 750,000 EDGAR filings.<sup>16</sup> Even if all Nasdaq-listed companies used all four Form 8-K filings, this would represent less than 2% of total EDGAR filings. As such, Nasdaq does not believe its proposal will have any adverse impact on competition for these services.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Nasdaq has received two comments regarding the proposed rule change. One commenter requested additional information about the services offered by Nasdaq and questioned the competitive impact of Nasdaq offering services to listed companies. Nasdaq's response to these questions are incorporated in Items 3 and 4, above. In addition, the commenter questioned whether Nasdaq will devote sufficient resources to the dissemination of information through PrimeZone. In fact, Nasdaq and PrimeZone are committed to expanding the already substantial PrimeZone distribution network. Finally, the commenter suggested that providing PrimeZone services to listed companies may be a "conflict of interest" with Nasdaq's role as a regulator. Nasdaq strongly disagrees with this assertion as Nasdaq does not regulate the market for information dissemination. While Nasdaq rules support the rules of the Commission by requiring companies to disclose material news, Nasdaq rules defer to the Commission's rules to determine the proper method of such disclosure.<sup>17</sup> Nasdaq has no intention to change these rules.<sup>18</sup>

A second commenter expressed concerns about paying for services that his company would not use. As noted in Section 3, above, Nasdaq believes that the listing fee provides substantial value even to companies that do not use any of the services offered by Nasdaq, as it also pays for access to the trading

<sup>16</sup> This estimate is based on a search of the EDGAR database performed through EDGARpro at <http://pro.edgar-online.com/>.

<sup>17</sup> Nasdaq rules permit material information to be disclosed in "any Regulation FD complaint method (or combinations of methods)." See Nasdaq Rule 4310(c)(16) and IM-4120-1 (emphasis added).

<sup>18</sup> The commenter also requested information as to the allocation of fees within Nasdaq. Nasdaq notes that as a public company it files periodic reports that include financial information with the Commission. This information will identify the sources of Nasdaq's revenues consistent with the requirements for those reports and U.S. generally accepted accounting practice.

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> See Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR-NASDAQ-2006-001) where the Commission noted that Nasdaq operates in a competitive global exchange marketplace for listings, financial products, and market services and competes in such an environment with other market centers, including national securities exchanges, ECNs, and other alternative trading systems, for the privilege of providing market and listing services to broker-dealers and issuers.

<sup>15</sup> Based on Nasdaq's analysis of press releases sourced from the Comtex News Network data feed for the 90 days ending on October 23, 2006.

facilities and regulation of the Nasdaq marketplace, which have been enhanced since the last fee increase. In addition, Nasdaq notes that the services being provided are designed to supplement those a company already uses in achieving its investor relations, disclosure and other corporate objectives.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NASDAQ-2006-040 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NASDAQ-2006-040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2006-040 and should be submitted on or before December 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-19620 Filed 11-20-06; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54750; File No. SR-NYSEArca-2006-88]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees and Charges

November 14, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 13, 2006, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. NYSE Arca has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges in order to modify the fee that applies to Option Strategy Executions.<sup>5</sup>

The text of the proposed rule change is available on the Exchange's Internet Web site (<http://www.nysearca.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange represents that the purpose of this proposed rule change is to modify the fee that applies to "Option Strategy Executions." These transactions include reversals and conversions,<sup>6</sup> dividend spreads,<sup>7</sup> box spreads,<sup>8</sup> and merger spreads.<sup>9</sup> Because the referenced Options Strategy Executions are generally executed by

<sup>5</sup> Fees on Options Strategy Executions are applicable through a Pilot Program until March 1, 2007.

<sup>6</sup> Reversals and conversions are transactions that employ calls, puts, and the underlying stock to lock in a nearly risk free profit. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

<sup>7</sup> Dividend spreads are trades involving deep-in-the-money options that exploit pricing differences arising around the time a stock goes ex-dividend.

<sup>8</sup> Box Spreads is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively.

<sup>9</sup> A merger spread is a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices followed by the exercise of the resulting long option position.